

Message Text

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ORIGIN PM-04

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P R 272348Z AUG 75

FM SECSTATE WASHDC

TO AMEMBASSY BONN PRIORITY

INFO AMEMBASSY ANKARA

AMEMBASSY ATHENS

USMISSION NATO

AMEMBASSY BRUSSELS

USCINCEUR

C O N F I D E N T I A L STATE 204775

E.O. 11652: GDS

TAGS: MASS, GW, TU, US

SUBJECT: PROSPECTIVE FRG TRANSFER OF TF-104G'S

REF: A) BONN 13453 B) STATE 120198 C) BONN 8581

1. IN INTERIM SINCE OUR RECEIPT OF REF C, DEPARTMENT HAS
CAREFULLY REVIEWED US-FRG AGREEMENTS FROM 1960'S GOVERNING
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THIRD-PARTY TRANSFERS OF US-ORIGIN MILITARY EQUIPMENT
IN GENERAL AND THE 1972 EXCHANGE REGARDING THE TF-104G'S.
IN VIEW OF US STATUTORY REQUIREMENTS RELATING TO SUCH
TRANSFERS, DEPARTMENT CONCLUDED THAT WE COULD NOT APPROVE

TRANSFER BY FRG OF THESE AIRCRAFT TO TURKEY SO LONG AS THE CONGRESSIONALLY-IMPOSED SUSPENSION OF MILITARY ASSISTANCE AND SALES TO THE GOT REMAINS IN EFFECT (SECT. 620(X) OF FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED). WE HAVE DELAYED IN CONVEYING THIS DECISION TO YOU IN THE HOPE THAT THE SUSPENSION ON TURKEY WOULD BE LIFTED, THEREBY PERMITTING THE USG TO APPROVE THE TRANSFER. SINCE THIS HAS NOT OCCURRED, AND TRANSFER OF AIRCRAFT IS NOW IMMINENT, EMBASSY SHOULD CONVEY TO APPROPRIATE FRG OFFICIALS OUR DECISION NOT TO APPROVE TRANSFER. FOLLOWING INFORMATION MAY BE USED AS NECESSARY IN EXPLAINING USG POSITION.

2. AS EMBASSY CONFIRMED IN REF C, THESE TF-104G'S ARE SAME AIRCRAFT ORIGINALLY INCLUDED IN PACKAGE DEAL OF 36 F-104S AIRCRAFT TURKS OBTAINED FROM ITALY. AS WE NOTED IN STATE 207820 OF SEPTEMBER 20, 1974, USG APPROVAL WOULD BE NEEDED FOR TRANSFER OF THE TWO TF-104G'S. WHILE THE FRG DECIDED TO POSTPONE THAT TRANSACTION (BONN 16969 OF OCTOBER 29, 1974), THE ITALIANS PROCEEDED WITH THE TRANSFER OF THE F-104S'S WHICH USG APPROVED PRIOR TO ENTRY INTO FORCE ON FEBRUARY 5, 1975 OF SUSPENSION ON TURKEY. GAO SUBSEQUENTLY AUDITED THAT TRANSACTION, WHICH COMPLIED WITH ALL REQUIREMENTS OF SECT. 620(X), AND IS AWARE THAT USG DID NOT PROVIDE FINAL CONSENT TO TF-104G TRANSFER IN LIGHT OF FRG'S POSTPONEMENT OF DECISION.

3. AS FOR FRG CLAIM REPORTED REF C THAT USG APPROVED IN 1972 TRANSFER OF TF-104G AIRCRAFT TO TURKEY, WE DO NOT CONCUR WITH THAT INTERPRETATION. EMBASSY'S NOTE VERBALE OF NOVEMBER 30, 1972 (CITED REF C) RESPONDING TO FONOFF'S NOTE OF JULY 21, 1972 INFORMED FRG THAT USG HAD NO REQUIREMENT FOR TEN EXCESS GERMAN F/TF-104G'S LOCATED AT LUKE AFB, ARIZONA AND ADDED THE SUGGESTION THAT THE USG THOUGHT IT DESIRABLE IF THE FRG "COULD CONSIDER MAKING THESE PLANES AVAILABLE TO NATO COUNTRIES IN THAT AREA" (I.E., NATO'S SOUTHERN FLANK). THAT SUGGESTION, WHICH DID NOT EXPRESSLY IDENTIFY WHICH COUNTRIES WE HAD CONFIDENTIAL

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IN MIND, WAS CONSTRUED AS NOTHING MORE THAN AN INDICATION THAT WE WERE PREPARED TO BE RECEPTIVE AT THAT TIME TO A FIRM REQUEST FROM THE FRG THAT WE APPROVE THE TRANSFER OF THESE AIRCRAFT TO TURKEY (OR GREECE AND ITALY). WE DID NOT THEREFORE CONSIDER THE 1972 SUGGESTION AS FINAL USG APPROVAL AND DID NOT SUBSEQUENTLY INCLUDE THE TEN F/TF-104G'S ON THE ANNUAL REPORT FOR 1972 TO CONGRESS OF APPROVED THIRD-PARTY TRANSFERS.

4. ANOTHER REASON THAT WE DID NOT VIEW THE NOVEMBER 30, 1972 NOTE AS FINAL APPROVAL IS THAT IT DID NOT MEET THE PROCEDURES AGREED UPON AD REFERENDUM IN 1965 CONCERNING DISPOSAL OF SURPLUS FRG EQUIPMENT OF US ORIGIN. UNDER

THOSE PROCEDURES, IT WAS AGREED THAT DISPOSAL OF AIRCRAFT TO SO-CALLED CATEGORY III COUNTRIES, INCLUDING GREECE AND TURKEY, "WILL BE THE SUBJECT OF DISCUSSIONS" BETWEEN THE FRG AND USG. AS A "GENERAL CONDITION", IT WAS FURTHER AGREED THAT WE AND THE FRG WOULD CONSULT REGARDING MILITARY ASSISTANCE AND SALES TO GREECE AND TURKEY. WE DO NOT THEREFORE AGREE THAT OUR SUGGESTION OF 1972 THAT THE FRG CONSIDER MAKING THE F/TF-104G'S AVAILABLE TO NATO COUNTRIES ON THE SOUTHERN FLANK CONSTITUTED THE DISCUSSIONS AND CONSULTATIONS ON TURKEY CALLED FOR IN THE 1965 AGREEMENTS.

5. AN ADDITIONAL AND MORE IMPORTANT CONSIDERATION IS THAT THE 1965 PROCEDURES ARE NOW OUT-OF-DATE WITH US

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STATUTORY REQUIREMENTS. THE FRG F/TF-104G'S LOCATED AT LUKE AFB WERE OBTAINED UNDER FOREIGN MILITARY SALES (FMS) PROCEDURES, AND THE FOREIGN ASSISTANCE ACT OF 1973 AMENDED THE FOREIGN MILITARY SALES ACT BY DIRECTING THE PRESIDENT NOT TO GIVE HIS CONSENT TO TRANSFERS OF FMS-ORIGIN IMPLEMENTS OF WAR 1) UNLESS THE US ITSELF WOULD TRANSFER THE ITEM TO THE COUNTRY CONCERNED, 2) UNTIL THE CONGRESS IS NOTIFIED IN ADVANCE IN WRITING OF THE INTENDED TRANSFER, AND 3) UNTIL THE PROPOSED RECIPIENT COUNTRY HAD PROVIDED ASSURANCES IN WRITING TO THE USG THAT IT WOULD NOT FURTHER TRANSFER THE ITEMS (IF SIGNIFICANT DEFENSE ARTICLES ON THE US MUNITIONS LIST) WITHOUT FIRST OBTAINING US CONSENT. ALTHOUGH TECHNICALLY, CONFIDENTIAL

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ARRANGEMENTS IN FORCE PRIOR TO ENACTMENT OF 1973 ACT MIGHT BE REGARDED AS UNAFFECTED, WE WOULD NOT WISH TO PRESS SUCH A TECHNICAL ARGUMENT WITH CONGRESS, ESPECIALLY IN LIGHT OF CONGRESSIONAL INTENT IN ENACTING SECTION 620(X). IT IS BECAUSE OF THESE STATUTORY REQUIREMENTS AND SECTION 620(X) THAT WE HAVE BEEN UNABLE TO APPROVE TRANSFERS OF US MILITARY EQUIPMENT OF FMS-ORIGIN (AS WELL AS MAP AND CERTAIN COMMERCIAL ITEMS) TO TURKEY. (FYI: WE INTEND AT LATER DATE TO RAISE WITH FRG LARGER QUESTION OF UPDATING 1965 PROCEDURES. END FYI).

6. WE ARE SURE THAT FRG CAN APPRECIATE LIKELY REACTION OF CONGRESS ONCE IT DISCOVERED (AS IT SURELY WOULD) THAT GERMANS HAD TRANSFERRED TWO FMS-ORIGIN AIRCRAFT DIRECTLY FROM US TO TURKEY. WE COULD NOT JUSTIFY SUCH TRANSFER ON BASIS OF 1965 AGREEMENT OR 1972 EXCHANGE OF NOTES. WE FURTHER BELIEVE THAT TRANSFER IF IT TOOK PLACE WOULD SERIOUSLY JEOPARDIZE OUR CURRENT STRENUOUS EFFORTS TO OBTAIN LEGISLATION ALLEVIATING OR LIFTING SUSPENSION UNDER SECTION 620(X) OF MILITARY ASSISTANCE AND SALES TO TURKEY. ONCE SUCH LEGISLATION PERMITS, WE WOULD OF COURSE BE WILLING TO CONSIDER APPROVAL OF TF-104G TRANSFER. INGERSOLL

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